

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 20889 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ACHER PATA NAJA & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR DP KINARIWALA for Petitioner(s) : 1 - 5.

MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,

None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/10/2005

ORAL JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioners have

challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 29.1.2001 passed in Revision Application No.TEN.B.R.No.29 of 1990 in dismissing the same and confirming the order passed by the Mamlatdar and ALT, Rajula as well as the order passed by the Deputy Collector, Rajula dated 15.6.1990 in declaring Acres 16 - 9 Gunthas of land as excess land under the provisions of the Gujarat Agricultural Land Ceiling Act (hereinafter referred to as "the Act" for short).

2. The petitioners submitted necessary declaration / Form under the provisions of the Act declaring Acres 66 - 34 Gunthas in their holding and the Mamlatdar and ALT, Rajula by his order dated 27.3.1989 passed in Ceiling Case No.160 of 1976 held that they are entitled to only one unit i.e. Acres 50 - 25 Gunthas and therefore declared Acre 16 - 9 Gunthas land as excess land. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Rajula date 27.3.1989 passed in Ceiling Case No.160 of 1976, the petitioners preferred appeal

before the Deputy Collector, Rajula who by his order dated 15.6.1990 dismissed the said appeal confirming the order passed by the Mamlatdar and ALT, Rajula dated 27.3.1989. Being aggrieved and dissatisfied with the aforesaid two orders passed by the Mamlatdar and ALT, Rajula as well as the Deputy Collector, Rajula declaring land admeasuring Acres 16 - 9 Gunthas situated at village Utiya, Taluka - Rajula, District Amreli as excess land under the provisions of the Act, the petitioner preferred the revision application before the Gujarat Revenue Tribunal being Revision Application TEN.B.R.No.29 of 1990. It appears from the record that the said revision application came to be dismissed in absence of the petitioner and / or their advocate and the same came to be dismissed by order dated 25.8.1999, the petitioner preferred Restoration Application being No.TEN.B.R.11 / 1999 which came to be allowed by Gujarat Revenue Tribunal by its order dated 10.5.2000 and it was directed to decide the revision application on merits. Thereafter on merits, the Gujarat Revenue Tribunal by its judgment and order dated 29.1.2001 dismissed the aforesaid Revision

Application TEN.B.R. No.29 of 1990 confirming the orders passed by the Mamlatdar & ALT, Rajula as well as Deputy Collector, Rajula declared acres 16 - 9 gunthas as excess land. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 29.1.2001 passed in Revision Application TEN.B.R.No.29 of 1990, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. It is required to be noted that the judgment and order passed by the Gujarat Revenue Tribunal which is challenged in the present Special Civil Application is dated 29.1.2001 and the present Special Civil Application has been filed after a period of four and half years i.e on 13th June, 2005 and there is no explanation whatsoever for filing the present Special Civil Application challenging the judgment and order passed by the Gujarat Revenue Tribunal dated 29.1.2001 belatedly. Under the circumstances, as such the present Special Civil Application is required to be dismissed on the ground of delay and laches.

4. Even otherwise, this Court heard the learned advocate appearing on behalf of the petitioner on merits. Shri Gaurang Patel, learned advocate appearing on behalf of Shri D.P.Kinariwala, learned advocate for the petitioner has vehemently submitted that all three authorities below have materially erred in giving only one unit and thereby declaring Acres 16 - 9 Gunthas of land as excess land under the provisions of the Act. It is further submitted that in fact, the petitioner No.4 - Laxmiben Naja was major as on 1.4.1976 and therefore, she was entitled to one additional unit. He has relied upon one school leaving certificate which is annexed as Annexure-C to the petition in support of his above submission. Therefore, it is submitted that the Gujarat Revenue Tribunal has materially erred in dismissing the revision application confirming the orders passed by the Mamlatdar and ALT, Rajula as well as the Deputy Collector, Rajula declaring acres 16 - 9 gunthas as excess land under the Act and therefore, it is requested to allow the present special civil application.

5. It is required to be noted that school leaving certificate which is relied upon by the petitioners in support of their submission that the petitioner No.4 - Laxmiben Naja was major as on 1.4.1976 and therefore, she was entitled to one additional unit is concerned, the school leaving certificate is of 9.4.2005 and the revision application came to be dismissed by the Gujarat Revenue Tribunal on 29.1.2001. At no point of time, the petitioners have submitted said school leaving certificate. In fact, it is observed by the Gujarat Revenue Tribunal in its judgment and order dated 29.1.2001 that though ample opportunities were given to the petitioners to produce documentary evidence with regard to the birth date of their children, but the petitioners had not produced any documentary evidence to show birth date of children though it was contended that one of the child was major. Therefore, the school leaving certificate which is dated 9.4.2005 which is obtained after period of four years after dismissal of Revision Application, cannot be considered and accepted and on the contrary, it appears that only

with a view to file the present special civil application, the said school leaving certificate has been obtained which can not be relied upon as the said school leaving certificate prima facie does not inspire any confidence.

6. Under the circumstances, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

[M.R.Shah, J.]

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